



The Court held a telephone status conference on February 13, 2023, to discuss the status of the class allegations and other topics. At that conference, for the first time, Plaintiffs indicated that they no longer intended pursue a class action. Defendants requested that the Court issue an order to that effect. By non-document order dated February 14, 2023, the Court directed Plaintiffs dismiss the class allegations by February 17, 2023.

On February 17, 2023, “Plaintiffs’ Notice of Dismissal of Class Claims *Only*,” ECF # 56. Although the filing itself is ambiguous on this point, the entry on the Court’s docket indicates that the dismissal is filed pursuant to Fed.R.Civ.P. 41(a)(1). While Defendants agree that the class allegations must be dismissed, it is necessary to make the following two procedural points in response to Plaintiffs’ filing.

First, Fed.R.Civ.P. 41 permits the dismissal of entire actions, not individual claims or parties. *Internatl. Watchman v. Oncewill*, N.D.Ohio No. 1:20cv2290, 2021 U.S. Dist. LEXIS 196553, at \*3 (Feb. 2, 2021), citing *Philip Carey Mfg. Co. v. Taylor*, 286 F.2d 782, 785 (6th Cir. 1961). Fed.R.Civ.P. 21 is the proper vehicle to drop individual claims or parties. *Id.* But Fed.R.Civ.P. 21 requires a court order and “just terms.”

Second, Fed.R.Civ.P. 41(a)(1) does not permit a party to unilaterally dismiss anything after an answer or a motion for summary judgment has been filed. Instead, Plaintiffs require a stipulation or a Court order “on terms the court considers proper.” Fed.R.Civ.P. 41(a)(2).

Critically, Plaintiffs’ filing is ambiguous about whether they intend to dismiss the class allegations *with* or *without* prejudice. And a dismissal under Rule 41(a)(1) is generally presumed to be without prejudice. Fed.R.Civ.P. 41(a)(1)(B).

Defendants respectfully request that the class allegations be dismissed by Court order and *with* prejudice. To permit otherwise would unfairly prejudice the County by permitting Plaintiffs

to possibly resurrect their class allegations after choosing not to pursue these allegations for over two years. See: *Dunlap v. Sevier Cty.*, 6th Cir. No. 20-6216, 2021 U.S. App. LEXIS 21961, at \*19 (July 23, 2021), citing *Grover by Grover v. Eli Lilly & Co.*, 33 F.3d 716, 718 (6th Cir. 1994) (requiring an entire action to be dismissed with prejudice under similar circumstances).

Defendants respectfully request that Plaintiffs' class allegations be stricken or dismissed with prejudice to refiling.

Respectfully submitted,  
MICHAEL C. O'MALLEY, Prosecuting  
Attorney of Cuyahoga County, Ohio

By: /s/ Michael J. Stewart  
Michael J. Stewart (0082257)  
mjstewart@prosecutor.cuyahogacounty.us  
Phone: (216) 443-6673  
Brendan D. Healy (0081225)  
bhealy@prosecutor.cuyahogacounty.us  
Phone: (216) 698-6447  
Matthew Convery (0095704)  
mconvery@prosecutor.cuyahogacounty.us  
Phone: (216) 443-7763  
CUYAHOGA COUNTY PROSECUTOR'S  
OFFICE  
The Justice Center, Courts Tower  
1200 Ontario Street, 8th Floor  
Cleveland, OH 44113  
Fax: (216) 443-7602

*Attorneys for Defendant Cuyahoga County and  
Randy Pritchett*

**CERTIFICATION OF COMPLIANCE WITH L. R. 7.1(f)**

This memorandum is seven (3) pages long (not including this certificate). This memorandum complies with L.R. 7.1(f).

/s/ Michael J. Stewart  
MICHAEL J. STEWART (0082257)  
Assistant Prosecuting Attorney

**CERTIFICATE OF SERVICE**

I certify that on the February 21, 2023, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all registered parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Michael J. Stewart  
MICHAEL J. STEWART (0082257)  
Assistant Prosecuting Attorney